

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING**



Office of the Director

FROM: Ellen McCarthy, Interim Director

TO: District of Columbia Zoning Commission

DATE: May 9, 2005

SUBJECT: Corrections to Preliminary Report for Zoning Commission Case #04-33
Text and Map Amendments for the Creation of New Regulations and an
Overlay Zone to Promote Affordable Housing (Inclusionary Zoning)

This summarizes the substantive corrections to the Office of Planning (OP) report submitted on April 29, 2005. These changes have been submitted for the record, and are noted below in italics.

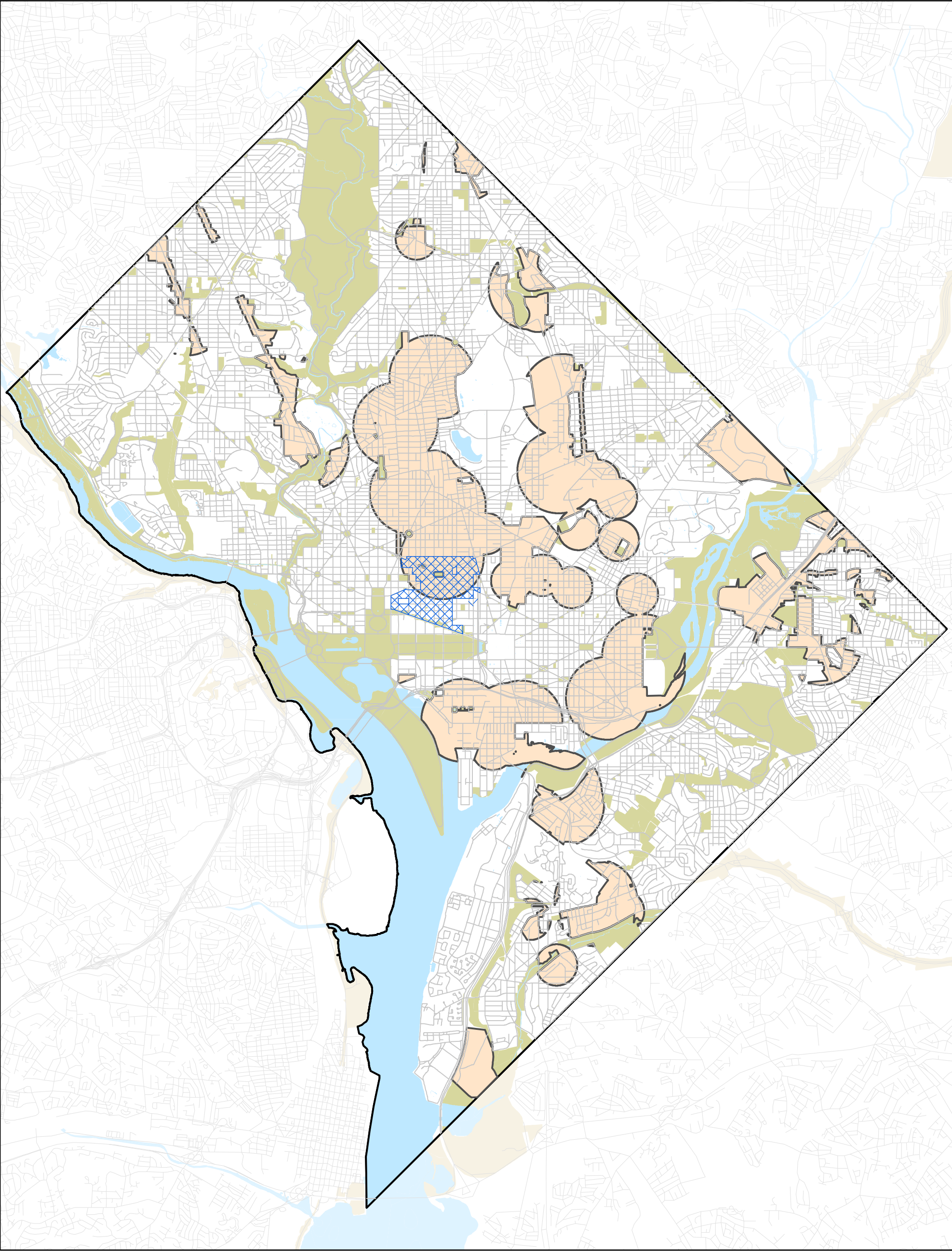
- Page v, Executive Summary page Executive Summary Section 5. a) (iv) :”
...bonus density (up to 20% of bonus density)” is corrected to “bonus density
(up to 20% of *base* density).
- Page II-6, (iv) Incentives 1st sentence: “(up to 20%)” becomes “(≤ 20% of the
base density)”;
- Page V-21, V.A.1), last paragraph: “This is further described in Section X...”
correct to “This is further described in Section V.D.1.”;
- Page VI-44, 1st row, middle cell: “Before control ...” corrected to “*During*
control...”;
- Page VII- 47, Affordable Set-Asides row: Substitute “*units*” for “GFA”
- Page VII-53 after 2nd bullet: The following sentence is deleted. “~~*If this proposal
is set down, OP will explore how much additional density could be achieved by
loosening restrictions on lot occupancy and density in TDR receiving zones*~~”.

The preliminary report that OP has posted on its web site incorporates these corrections.

Emc/slc-ar

INCLUSIONARY ZONING: BRIEF COMPARISON OF MAJOR ISSUES

TOPIC	OP MANDATORY CONCEPT	ORIGINAL MANDATORY CONCEPT	OP INCENTIVE-BASED CONCEPT	CONSIDERATIONS
THRESHOLD	10 new or rehabilitated units	10 new or rehabilitated units	No threshold.	
TARGET AREAS AND PROJECTS	<p>Mandatory Overlay</p> <ul style="list-style-type: none">• 16 Metro station areas:• Housing Opportunity Areas (HOA),• Development Opportunity Areas (DOA),• Several Special Treatment Areas (STA) <p><i>Excludes</i> DD and R-1 & R-2 Low Density Districts</p> <p>Outside Overlay, require PUDs</p>	<p>Mandatory Overlay</p> <ul style="list-style-type: none">• 16 Metro station areas:• Housing Opportunity Areas (HOA),• Development Opportunity Areas (DOA),• Several Special Treatment Areas (STA) <ul style="list-style-type: none">• The Downtown Development District (DD), after January 2008 <p>Outside Overlay, require PUDs</p>	<p>Overlay</p> <ul style="list-style-type: none">• Most Metro station areas:• Housing Opportunity Areas (HOA),• Development Opportunity Areas (DOA),• Several Special Treatment Areas (STA) <p><i>Excludes</i> DD and R-1 & R-2 Low Density Districts</p> <p>Outside Overlay, require PUDs</p>	<p>Comprehensive Plan permits bonus density as an incentive in only these target areas.</p>
AFFORDABLE SET-ASIDES	<p>Proposed Ratio Affordable SF to Market SF:</p> <ul style="list-style-type: none">○ Rental: 1:1○ For-Sale: Between 1:1 and 1:1.5	<ul style="list-style-type: none">• 15% of units for New - <u>Low-Rise Buildings</u>.• 12 % of units for <u>Mid-Rise and High-Rise Buildings</u>• 7.5% of units for <u>Substantial Rehabilitation</u> Projects	<p>Matter-of-right set-aside to be pre-determined by economic model</p> <p><u>Outside Overlay</u> to be evaluated by model on case-by-case basis.</p>	<p>OP to evaluate economic impact through feasibility analysis.</p>
INCENTIVES/COMPENSATIONS	<ul style="list-style-type: none">• Up-to 20% density increase, where possible• Relaxation of Some Zoning Restrictions	<p>Up to 20% increase over base density, height & area.</p>	<p>Voluntary requires greater incentives: i.e., greater bonus density , shorter processing time.</p>	<p>Some vocal resident concern over density increases.</p>
TARGET INCOMES	<p><u>Rental Low-Rise</u>: 50% of set-aside @ 50% 70% AMI; 50% of set-aside at 70% AMI</p> <p><u>Rental Mid & High-Rise</u>: 50% of set-aside @ 70% AMI; 50% of set-aside at 80% AMI</p> <p><u>For-Sale</u>: Up to 80% AMI</p>	<p>50% of set-aside @ 80% AMI</p> <p>50% of set-aside @ 50% AMI</p> <p>Matches Housing Act of 2002</p>	<p><u>Rental</u>: Section 8 Low –Income (65% AMI)</p> <p><u>For-Sale</u>: Up to 80% AMI</p>	<p>Income flexibility to compensate for varying factors outside of program’s control, such as interest rate changes.</p>
ADMINISTRATIVE ISSUES	<p>To Be Determined: Seeks to moderate administrative impact on District government</p>	<p>Significant burden on District government</p>	<p>To Be Determined: Likely to have least administrative burden for District</p>	<p>Council Action needed to establish full program</p>



Executive Summary - Proposed Inclusionary Zoning Overlay Area

Miles

0 0.5 1 1.5

Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ April 28, 2005

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Inclusionary Zoning

Water

Parks

Included Only in Campaign's Mandatory Proposal

Downtown Development District

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING**



Office of the Director

FROM: Ellen McCarthy, Interim Director

TO: District of Columbia Zoning Commission

DATE: April 29, 2005 – corrected May 6, 2005¹

SUBJECT: Preliminary Report for Zoning Commission Case #04-33

Zoning Regulations Text and Map Amendments for the Creation of New
Regulations and an Overlay Zone to Promote Affordable Housing
(Inclusionary Zoning)

I. EXECUTIVE SUMMARY

A. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning recommends that the Zoning Commission schedule a public hearing on the three Inclusionary Zoning (IZ) proposals included in this report:

- 1. The Office of Planning Mandatory Proposal;**
- 2. The Campaign for Mandatory Inclusionary Zoning's (the Campaign's) Mandatory Proposal, which was submitted to the Commission in November 2004, and;**
- 3. OP's Incentive-Based Proposal**

OP favors the first mandatory proposal, which it believes incorporates the most workable elements of the Campaign's proposal and includes new provisions representing possible common ground among affordable housing advocates and the District's housing developers. A group representing some of the housing advocates and developers have been meeting with OP regularly during 2005. However, differences remain among the

¹ This corrects the following in the executive summary submitted on April 29, 2005. Page v, Executive Summary Section 5. a) (iv) :” ...bonus density (up to 20% of bonus density)” is corrected to “bonus density (up to 20% of base density).

group, and discussion in public forums have just begun. Therefore, in the interests of having a broad range of proposals for the Commission to consider when soliciting public input and when crafting Inclusionary Zoning regulations, OP also recommends that the Commission set down both the Campaign's original mandatory proposal and the OP voluntary proposal

A map of the generalized areas of the District that may be covered by the proposals is included as Attachment 1, at the end of this executive summary, and in more detail in maps attached to the main report. OP has told the Campaign that some of their target areas have been built out since the Comprehensive Plan was adopted and are no longer appropriate for inclusion. The Campaign has agreed that the map included with this report as Attachment 1 adequately represents the geographic areas described in the Campaign's proposal

The principal points of the three concepts are compared in Attachment 2 to this executive summary. A detailed comparison is included as Attachment 4 to the body of the main report.

B. PROCEDURAL ISSUES

There are three procedural issues that the Office of Planning wishes to bring to the Commission's attention.

1. Vesting Considerations

Because the mandatory proposals would create an overlay, both would be considered to be a map amendment. As such, the "setdown rule", 11 DCMR § 3202.5, would apply. If the mandatory proposals were considered more restrictive than the current matter of right standard, the more restrictive of the two would apply immediately to all future building permit applications. Neither OP nor the Petitioner believes it would be in the best interests of the public for this to occur. Therefore OP, with the concurrence of the Petitioner, requests that the Commission indicate that the setdown rule not apply. OP can also represent that the Office of the Attorney General believes that the Commission has the authority to do this.

2. Public Posting Considerations

The status of this Petition as a map amendment would also require the Petitioner to "post the street frontage of each square affected by the rezoning proposal with a notice of public hearing", 11 DCMR § 3014.3. Strict compliance with this rule would require the Petitioner to post approximately 20% of the land in the District. Clearly this would be unduly burdensome. For this reason OP, on behalf of the Petitioner, requests a waiver of this rule.

3. Advertising and Supplemental Information Considerations

It is OP's understanding that the Petitioner wishes to provide supplemental information to the Commission prior to the hearing. Section 3013.1 of the Commission's rules of procedures permits such a submittal, but disallows the advertisement of the case until twenty days after the materials are received. OP agrees with the Petitioner that time is of the essence with respect to this initiative, and therefore requests that this rule be waived to permit the Office of Zoning to immediately advertise this case, but to also permit the Petitioner to file supplemental materials no later than 20 days prior to the hearing date advertised.

C. ACKNOWLEDGMENTS

The Office of Planning has been fortunate to be able to work with an extensive array of dedicated groups and individuals in creating these proposals. OP wishes particularly to acknowledge:

- The Inclusionary Zoning Working Group OP organized in 2003, which helped lay the groundwork for the current IZ proposals.
- The Campaign for Mandatory Inclusionary Zoning (the Campaign), which is the Petitioner in this Zoning Commission Case, and which submitted its proposal for mandatory IZ to the Commission in November 2004.
- The informal group that has been meeting during 2005 to find common ground among several IZ proposals. This group consists of:
 - Members of the Campaign for Mandatory Inclusionary Zoning,
 - Housing Developers and members of the District building industry,
 - Members of Urban Land Institute's Work-Force Housing Task Force.

D. BACKGROUND AND PROPOSALS

4. The Concept of Inclusionary Zoning

Inclusionary Zoning (IZ) is a technique used to ensure a mix of affordable housing with market rate housing units. In its basic form, it can be:

- a) *Mandatory* and require that each new housing development set-aside a certain percentage of units affordable to a specific income range ("set-asides"), or;
- b) *Voluntary* and provide bonus density or other incentives to develop the

affordable units. The provision of bonus density or other compensation is not required in an IZ program, but has often helped programs avoid legal challenges. An IZ housing program can be created by City Council legislation, by a Zoning Commission action, or by a combination of the two.

A mandatory program requires the inclusion of affordable housing and may try to compensate a developer or a landowner by granting additional density, reduced fees, etc. Around the country, mandatory programs have been more successful in producing affordable housing than have voluntary programs. While they may be seen as placing greater burdens on developers and having less flexibility, they are also considered more predictable and certain.

A voluntary incentive-based proposal seeks to provide incentives that will entice a developer to provide affordable housing, but that will not give the developer a windfall profit. They have not been as successful in producing affordable housing, but they leave the developer free to decide whether there is a market risk to participating in the program. Voluntary programs are typically more flexible, and often use expedited processing as an incentive.

The difference between a mandatory proposal and an incentive-based one is fundamental. However, the specifics of the concepts are similar in so many ways that OP is presenting a range of concepts for the Zoning Commission (the Commission) to consider and seek input on through public hearings.

5. Proposals

OP is presenting three concepts for the Commission's consideration:

a) Office of Planning Mandatory Proposal:

A concept from the Office of Planning (OP), based on OP analysis, and discussions with the Campaign for Inclusionary Zoning (the Campaign) and members of the housing development community. This would require the inclusion of workforce housing in residential developments or rehabilitations over a certain size; would establish an Overlay focusing the target areas on selected Metro stations; would relate the amount of affordable housing requirement directly to the amount of bonus density achieved; and would apply an economic evaluation model to the affordability requirements for PUD applications outside of the Overlay area.

- (i) *Applicability:* Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan. Requirements for projects outside the resulting geographic

areas would be determined partially by an economic model developed by OP².

- (ii) *“Set-Aside” Amount of Project to Be Affordable:* To be based on a ratio of square footage of affordable housing to square footage of market rate housing beyond that permitted as matter-of-right.
Proposed Ratios:

Rental - 1:1

For-Sale - Between 1:1 and 1:1.5 (to be determined)

- (iii) Income Ranges:

- Rental Low-Rise:
 - 50% of set-aside at 50% AMI,
 - 50% of set-aside at 70% AMI
- Rental Mid-Rise and High-Rise”
 - 50% of set-aside at 60% AMI,
 - 50% of set-aside at 70% AMI
- For-Sale: 100% of set-aside at 80% AMI

- (iv) *Incentives:* Within specified geographic areas, bonus density (up to 20% of base density) would be in direct correspondence to amount of affordable housing constructed. Outside of specified areas, economic model would be used to evaluate appropriate incentives. Possible relaxation of some area-related zoning restrictions.

b) Campaign for Mandatory Inclusionary Zoning Proposal:

A concept based on the proposal filed by the Campaign for Mandatory Inclusionary Zoning (the Campaign). The exact language of the Campaign’s proposal is not being suggested for set-down due to the number of legal insufficiencies that have been identified by the Office of the Attorney General. The Campaign proposal has been the starting point for the consensus-oriented discussions that have resulted in the OP proposal recommended above. It would require the inclusion of workforce housing in residential developments or rehabilitations over a certain size, and seeks to balance this requirement by offering additional density where possible. Its basic provisions include the following:

² OP consultants: Robinson & Cole LLP, with The Metis Group

- (i) *Applicability*: Residential projects of 10 or more units in areas around selected Metro stations, most areas identified as opportunity areas or special treatment areas in the Comprehensive Plan,; the Downtown Development District (DD) as of 2008; all District or NCRC-owned properties that are to be residentially developed; any project seeking an FAR increase.
- (ii) *Amount of Project to Be Affordable*: 15% of total project units for low-rise; 12 % of total project units for mid-rise and high-rise; 7.5% of total project units for substantial rehabilitation.
- (iii) *Income Ranges*: 50% at 50% of AMI; 50% at 80% AMI.
- (iv) *Incentives*: Up to 20% density bonus, if available.

c) Incentive-Based Proposal:

A concept from the Office of Planning (OP) that would encourage the voluntary inclusion of affordable housing in residential developments by providing incentives such as bonus density calibrated by an economic model, and streamlined processing.

- (i) *Applicability*: Same as OP proposal above.
- (ii) *Amount of Project to Be Affordable*: Would vary according to standardized economic profile of construction type, as determined with economic model.
- (iii) *Income Ranges*: Between 50% AMI and 80% AMI.
- (iv) *Incentives*: Would need to be higher than either mandatory proposal to provide adequate incentives. Would vary according to standardized economic profile of construction type, as determined with economic model.

The proposals are intended to be part of a program to promote the construction of affordable housing units in the District.

IZ has proven to be a useful tool for achieving more diverse communities through dispersing affordable housing. It helps generate affordable units in places with strong market demand, where there are often high levels of public services available. It can contribute to the economic health of a city by helping retain workforce households. However, IZ must be considered as only one of many tools in a comprehensive affordable housing program. Compared to direct financial subsidies, inclusionary zoning is not as productive for building affordable units, and is usually not powerful enough to reach very low incomes without additional subsidies.

6. Process and Procedures

OP notes that the proposal submitted by the Campaign includes items that the Office of the Attorney General (OAG) has advised the Campaign are beyond the authority of the Commission to enact and would require separate actions by the Mayor and the City Council.

Therefore the Campaign agrees with having the Commission consider the concepts, rather than all of the specifics, of the Campaign's proposal at this time.

E. MAJOR ISSUES

OP believes that the issues noted below are the major ones requiring discussion by the Commission, and input from the public. This list is based on information and reaction gathered during regular discussions with the Campaign and members of the housing development community. The Urban Land Institute has facilitated some of the discussions and some have been held at the invitation of Council Chair Linda Cropp.

1. Areas of Coverage

Both the Office of Planning's and the Campaign's mandatory proposals focus on Metro stops, Development and Housing Opportunity Areas and Special Treatment Areas. OP has worked with the Campaign to reach agreement on the areas that would be covered by the proposals. The principal geographic difference is that, after an adjustment period ending in January 2008, the Mandatory proposal would cover the Downtown Development District (DD), where no additional height or density is achievable. The other proposals would not include the DD.

The coverage areas illustrated in this setdown report are generalized. The areas need to be made more specific and better calibrated.

The Commission must seek input from communities about where, and if, they think it is appropriate to mandate or give incentives for affordable housing under an inclusionary zoning program.

2. How Much of a Project Should Be Reserved for Affordable Units?

In voluntary programs, or a mandatory situation where bonus density is being granted, this issue comes down to what ratio of market rate housing is needed or appropriate to balance an amount of IZ housing. Recent discussions among OP, the Campaign and housing developers have indicated that opinions for high-rise condominiums range from 1 to 1 (50% of bonus) up to 1.5 to 1 (40% of bonus). Discussions indicate an emerging consensus for high-rise rental project ratios of 1 to 1 (50% of bonus), and a smaller percentage for low-rise construction. OP will be using an economic model developed for the IZ program to help refine this discussion.

In mandatory situations where bonus density cannot be granted, such as the DD, policy questions arise around whether a smaller amount of affordable housing should be required and/or whether a longer market adjustment period should be built-in. This policy question does not affect only how to minimize the impact of IZ on developers' or landowners' bottom lines; it potentially impacts the neighborhoods surrounding projects where bonus density is granted. It will be important to carefully examine possible impacts during a hearing process.

3. Costs

Additional sharing of information about hard and soft development costs is needed to continue moving toward common ground on basic assumptions, and to calibrate the economic model that OP has developed to assess relationships among costs, densities, targeted incomes, etc.

4. What Should Be the Target Incomes?

Proposed income ranges are between 50% and 80% of the Area Median Income. While most participants in the conversations have indicated that the average of the ranges should be between 65% and 70%, differences remain over how deep or high a range of incomes a program should target. It would be useful to hear more about the ranges, and whether they could vary depending on the combination of development economics and density bonuses or other incentives.

Additional discussion is also needed about how to handle high condominium fees in ways that are not discriminatory towards potential renters or owners yet protect a developer or condominium association.

5. Impacts On Neighborhood Character, Transportation, Services and Other Infrastructure

OP, DDOT and other agencies must analyze in more detail where additional height, lot occupancy and/or density can currently be accommodated; forecast what the impact of possible bonus density might be on population, building height and massing, and; then assess what might be the impacts of the forecast changes on neighborhood character, traffic, parking and transportation, and other infrastructure capacities, as well as on schools and services.

6. Economic Impacts and Impacts on Housing Market

Inclusionary Zoning's essential economic impact reduces the potential revenues a project might receive if it is open to the market. To determine the feasibility and impact on housing development OP will be using an economic model. OP is working with development and real estate professionals to develop the necessary inputs to test Inclusionary Zoning impact. Inputs to the model will include:

- a) Potential revenues including market and affordable housing costs;
- b) Construction costs including hard and soft costs;
- c) Land costs sampled from across the District;
- d) Interest rates for construction and mortgages, and
- e) Estimated investor rates of return.

7. Waivers and Relief

A mandatory program must have provisions for waivers. Discussion is needed on:

- a) Buyout or Off-Site Provisions:
 - (i) How much, if any, of a requirement should be able to be satisfied by contributions to a fund for affordable housing off-site?
 - (ii) How far from a development could the off-site portion be constructed and still satisfy the IZ objective of contributing to mixed-income neighborhoods and de-concentrating poverty?
- b) Venue for Granting Efficient, Fair Relief:
 - (i) How much relief should or can be granted administratively? Will this be efficient? How will neighborhoods be protected?
 - (ii) When is a hearing before BZA or the Zoning Commission needed?
 - (iii) Can a process be structured that permits discretionary review but is not as time-consuming or expensive as a PUD, yet still protects neighborhood interests?

8. Legal Issues / Role of Council and Mayor

Some aspects of the mandatory proposal are not within the Commission's jurisdiction and would require separate action by the City Council and the Mayor to establish an integrated IZ program and set of IZ Zoning Regulations. The Office of the Attorney General will be advising on this.

9. Clarification of Comprehensive Plan Relationships

The Commission will need to consider the relationships among affordable housing objectives, the guidance given by the Generalized Land Use Map, the Generalized Land Use Policies map, and other elements of the Comprehensive Plan.

10. Administrative Issues

- a) Additional consideration is needed about how much administrative responsibility should be the government's and how much should be a developer's: e.g., selection of renters or purchasers from a pool of applicants.
- b) For simplicity and accuracy of administration it may be necessary to agree on certain procedural standards that mimic those in existing programs. The Low Income Housing Tax Credit Program (LIHTC) has been suggested as such a model.
- c) More consideration is needed of a review process that allows for site plan and massing review for projects that are greater than a matter-of-right project, but is quicker, more predictable, and less expensive than a PUD.

11. Affordability Period and Affordability Retention

- a) There are differences of opinion about how long an affordable unit should be required to retain its affordability restrictions. While longer periods retain units in the affordable stock, long periods may also inhibit a unit owner's ability to accumulate capital for climbing the economic ladder or financing a family member's higher education, or may discourage an apartment owner's long-term renovation of a building.
- b) Additional research and discussion with OAG is needed about how best to keep an affordable unit as one serving households within targeted incomes without violating fair housing laws.

Attachments to Executive Summary:

Attachment 1 - Map of Potential Areas of Mandatory IZ Coverage

Attachment 2 – Brief Comparison of Principal IZ Concepts

Attachment 3 – Issues Integral to Any IZ Program

**MAIN REPORT, TABLE CONTENTS, AND OTHER ATTACHMENTS
FOLLOW**

Emc/slc-ar

ISSUES INTEGRAL TO ANY IZ PROGRAM

1. Authority of the Zoning Commission and Other Legal Issues
 - a) Boundaries of the Zoning Commission's Authority
 - b) Balancing Economic Impact of IZ Requirements with Compensatory Density Increases and / or Other Compensatory Incentives
2. Relationship to the Comprehensive Plan
 - a) Written Elements
 - b) The Generalized Land Use Map
 - c) Generalized Land Use Policies Map
 - d) Summary of IZ relationship to Comprehensive Plan
3. Relationship of the IZ concept to the Zoning Regulations
 - a) Planned Unit Developments
 - b) Existing affordable housing incentive overlay zones
 - c) Other housing incentive overlay districts
4. Policy Issues
 - a) Appropriate Income-Level To Be Served by IZ Program
 - (i) Who lives in the District?
 - (ii) Who works in the District?
 - (iii) Who is most affected by current market?
 - b) Appropriate balancing of requirements with incentives
 - c) Areas and Conditions for Applying an IZ Program in the District

5. Development Economics

a) Types of Analysis

(i) Delivery Cost

(ii) Opportunity Cost

b) Possible Incentives

(i) Bonus Density

(ii) Tax Abatement

(iii) Quicker Approval

c) Preliminary Economic Analysis

(i) Construction Costs

(ii) Land Costs

(iii) Interest Rates

(iv) Revenues

d) Impacts

(i) Housing Production

(ii) Historic Preservation

(iii) Neighborhood Character

(iv) Population

(v) Transportation and Infrastructure

(vi) Services

e) Administrative Issues

(i) Approval

(ii) Monitoring

(iii) Enforcement